



EX PARTE OR LATE FILED

**State of New Jersey**

DIVISION OF THE RATEPAYER ADVOCATE  
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CHRISTINE TODD WHITMAN  
*Governor*

BLOSSOM A. PERETZ, ESQ.  
*Ratepayer Advocate  
and Director*

June 3, 1998

**ECFS AND OVERNIGHT**

Ms. Magalie Roman Salas  
Office of the Secretary  
Federal Communications commission  
445 Twelfth Street, S.W.  
Room TW-A325  
Washington, DC 20554

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Re: Petition of Global NAPs, Inc., For Preemption of the Jurisdiction of the New Jersey Board of Public Utilities Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996  
Docket No. 99-154

Dear Secretary Salas:

The New Jersey Division of the Ratepayer Advocate ("Ratepayer Advocate") has reviewed the comments submitted by various interested parties in connection to the petition filed in this matter by Global NAPs ("GNAPS") and submits the following response. The petition seeks to have the Federal Communications Commission ("FCC") assume the jurisdiction from the New Jersey Board of Public Utilities ("Board") because of the Board's alleged failure to timely act in the matter of Petition of Global NAPs, Inc. For Arbitration of Interconnection Rates, Terms, Conditions and related Arrangement as with Bell Atlantic- New Jersey, Inc. BPU Docket No. T098070426. The Ratepayer Advocate respectfully submits that as noted by the Board's counsel in its filed comments, prompt action by the Board to either accept or reject the proposed form of agreement, in view of the present state of the law would obviate the need for intervention by the FCC.

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The Telecommunications Act of 1996 (“Act”, or “1996 Act”) was intended to open the local exchange and long distance markets to increased competition in order that consumers have more choices, reduced prices, expanded services, enhanced technology and innovation. To facilitate entry of competition in the local markets, Section 251 of the Act requires that an incumbent local exchange carrier (“ILEC”), such as Bell Atlantic-New Jersey (“BA-NJ”), provide to any requesting competitive local exchange carrier (“CLEC”) interconnection and access to any of its services or network elements at rates, terms and conditions that are just, reasonable and nondiscriminatory. Furthermore, Section 252 of the Act established procedures for voluntary and direct negotiations, arbitration, and approval of interconnection agreements between ILECs and CLECs. Elements of an interconnection agreement which cannot be agreed upon within the time constraints referenced in the Act are submitted to arbitration. The final agreement, inclusive of those provisions resolved through Arbitration, must then be either accepted or rejected by the State Commission.<sup>1</sup>

Section 252 of the Act establishes a distinct process for the negotiation, arbitration, and approval of an interconnection agreement. First, voluntary negotiations take place during the first 135 days following the request to enter into an interconnection Agreement with the ILEC; second, the Act requires arbitration of the unresolved issues after the 160th day following the interconnection agreement request; then, the parties must incorporate the arbitrated terms with the negotiated terms followed by approval or rejection of the complete interconnection agreement by the State Commission. GTE South Inc. v. Morrison, et al., 957 F. Supp. 800,804 ( E.D. Va. 1997).

In the herein controversy, GNAPS asserts that it is a CLEC entitled under the Act to choose,

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<sup>1</sup>Section 252(e)(1) of the Act provides that: “any interconnection Agreement shall be submitted for approval to the state commission...which . . . shall approve or reject the agreement with written findings as to any deficiencies”

as part of its interconnection agreement with BA-NJ, the same provisions as the pre-existing agreement between MFS and BA-NJ. BA-NJ claims that the GNAPS agreement should not have the same duration as the MFS agreement, and that reciprocal compensation is unwarranted because Internet calls, which GNAPS would carry, terminate beyond the local calling area.<sup>2</sup> The FCC's recent decision on this point is instructive. The Commission stated that:

[A]fter reviewing the record developed in response to these requests, we conclude that ISP-bound traffic is jurisdictionally mixed and appears to be largely interstate. This conclusion, however, does not in itself determine whether reciprocal compensation is due in any particular instance. [As explained below,] . . . parties may have agreed to reciprocal compensation for ISP-bound traffic, or a state commission, in the exercise of its authority to arbitrate interconnection disputes under section 252 of the Act, may have imposed reciprocal compensation obligations for this traffic. In the absence, to date, of a federal rule regarding the appropriate inter-carrier compensation for this traffic, we therefore conclude that parties should be bound by their existing interconnection agreements,

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<sup>2</sup>BA-NJ argues that the recent FCC ruling in GTE Telephone, GTOC Transmittal No. 1148, CC Docket No. 98-79, FCC 98-292, (October 30, 1998), that GTE's ADSL technology for internet connection to ISPs are jurisdictionally interstate applies here as well. However, The FCC specifically withheld from such a pronouncement and issued a separate order addressing reciprocal compensation issues. The FCC is mindful that several State Commissions have ruled that reciprocal compensation is due because dial-up service to the Internet is local in nature.


as interpreted by state commissions.<sup>3</sup>

The arbitrator in this matter determined that GNAPS is eligible to enter into an interconnection agreement with BA-NJ, and that GNAPS can opt-into the MFS agreement as a whole including its durational period (i.e., 19 days short of three years), with reciprocal compensation, as set forth therein.

The Board's decision to accept or reject the arbitrator's decision in the underlying matter does not require it to first reach a conclusion, as a matter of State regulatory policy, on issues such as reciprocal compensation on Internet calls or durational periods in subsequent interconnection agreements. The manner by which the Board chooses to address any such issues is distinctly within the Board's discretion. Accordingly, as represented to the Commission by the Board's legal counsel in its filed comments, since the Board has indicated its intention to expeditiously address the underlying matter, it should be permitted the opportunity to do so and thus conclude the underlying proceeding.

Very truly yours,

Blossom A. Peretz, Esq.,  
DIVISION OF THE RATEPAYER ADVOCATE

By:   
Jose Rivera-Benitez, Esq.  
Asst. Deputy Ratepayer Advocate

JRB/pc

cc: Service List

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<sup>3</sup> In FCC 99-38, the Commission made a February 26, 1999 Declaratory Ruling in CC Docket No 96-98 and notice of proposed Rulemaking in CC Docket No. 99-68 relative to I/M/Q Implementation of the Local competition provision in the Telecommunication Act of 1996 FCC Docket No. 96-98, and Inter-Carrier Compensation for ISP Board Traffic, FCC Docket No. 96-68.

BLOSSOM A. PERETZ, DIRECTOR  
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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

<b>In the Matter of:</b>	:	
<b>Petition of Global NAPs, Inc. for</b>	:	
<b>Preemption of Jurisdiction of the</b>	:	<b>CC Docket No. 99-154</b>
<b>New Jersey Board of Public Utilities</b>	:	
<b>Pursuant to Section 252(e)(5) of the</b>	:	
<b>Communications Act</b>	:	<b>AFFIDAVIT OF SERVICE</b>

Donna Carney, being of full age, deposes and says:

1. I am employed as a Legal Assistant in the Division of the Ratepayer Advocate. In that capacity I am assigned to work with Assistant Deputy Ratepayer Advocate Jose Rivera-Benitez.
2. On June 3, 1999, I caused a copy of the foregoing comments of the Ratepayer Advocate in the above-referenced matter to be sent via United Parcel Service (UPS) Next Day Air mail, postage prepaid, to the following:

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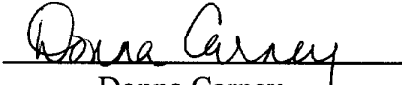
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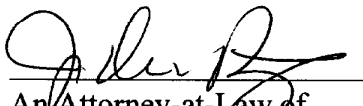
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I also caused a copy of the comments to be sent via first class mail to:

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Donna Carney

Sworn to and subscribed  
before me this 3rd day of  
June, 1999.

  
An Attorney-at-Law of  
the State of New Jersey